

AUG 03 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

ELEAZAR LUNA-SALINAS,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

Nos. 05-71572
05-74879

Agency No. A78-365-171

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006**

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Eleazar Luna-Salinas, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

immigration judge's ("IJ") decision denying his application for cancellation of removal, and its subsequent order denying his motion to reopen removal proceedings. To the extent we have jurisdiction, it is conferred by 8 U.S.C. § 1252. We dismiss in part and deny in part the petitions for review.

We lack jurisdiction to review the IJ's discretionary determination that Luna-Salinas failed to show exceptional and extremely unusual hardship. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005).

The BIA did not abuse its discretion by denying the motion to reopen, because the BIA considered the evidence Luna-Salinas submitted and acted within its broad discretion in determining that the evidence was insufficient to warrant reopening. *See Singh v. INS*, 295 F.3d 1037, 1039 (9th Cir. 2002) (The BIA's denial of a motion to reopen shall be reversed only if it is "arbitrary, irrational or contrary to law.>").

We do not consider Luna-Salinas's contentions regarding physical presence, because Luna-Salinas's failure to establish hardship is dispositive.

No. 05-71572: PETITION FOR REVIEW DISMISSED.

No. 05-74879: PETITION FOR REVIEW DENIED.